



Department of Veterans Affairs
Office of Inspector General

Memorandum to the File
Case Closure

Alleged Misuse of Official Time
Board of Veterans' Appeals, Washington, DC
(2012-01697-1Q-0084)

The VA Office of Inspector General (OIG) Administrative Investigations Division investigated an allegation that (b) (7)(C) Board of Veterans' Appeals (BVA), misused her official time by being absent without authorization and by failing to document her absences in VA's timekeeping system. We also investigated an allegation that BVA Management knew about (b) (7)(C)'s unauthorized absences and failed to take appropriate corrective action. To assess these allegations, we interviewed (b) (7)(C) and other BVA employees. We also reviewed (b) (7)(C)'s time and attendance, payroll, and VA email records, as well as relevant Federal laws, regulations, and VA policy. We did not substantiate either allegation.

Standards

The Standards of Ethical Conduct for Employees of the Executive Branch require employees to use official time in an honest effort to perform official duties. 5 CFR § 2635.705. VA policy requires employees to be on duty during the full period of their tours of duty unless absent on approved leave. VA Directive 5011, Paragraph 2. VA policy further states that the public interest requires the maintenance of high standards of employee integrity, conduct, effectiveness, and service to the public and that when such standards are not met, it is essential that prompt and just corrective action be taken. The policy of VA is to maintain standards of conduct and efficiency that will promote the best interests of the service. VA Handbook 5021/3, Part I, Chapter 1, Paragraph 3(a), (June 1, 2005). VA policy holds supervisors responsible for gathering and analyzing facts concerning each possible disciplinary or adverse action, documenting these facts, and for initiating appropriate and timely disciplinary or adverse actions. *Id.*, at Paragraph 5(c). The Family and Medical Leave Act (FMLA), as amended, and its implementing regulations, entitle an employee up to 12 weeks of unpaid leave per year for a serious health condition that has been certified by the employee's healthcare provider. 29 USC § 2601, *et seq.* and 29 CFR Part 825.

Alleged Misuse of Official Time and Failure of Management to Take Corrective Action

(b) (7)(C) told us that several years earlier, (b) (7)(C) began experiencing severe migraine headaches that prevented her from coming to work. He said that (b) (7)(C) applied for participation in FMLA and that based on the written certification provided by her

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healthcare provider, he granted her request. (b) (7)(C) said that (b) (7)(C) granted a second request from (b) (7)(C) again after receiving the appropriate certification from (b) (7)(C)'s healthcare provider.

(b) (7)(C) told us that several years earlier, he and (b) (7)(C) worked together on (b) (7)(C) and that he was aware that (b) (7)(C) began missing work due to having severe migraine headaches. He said that he was also aware that (b) (7)(C) approved (b) (7)(C) to take leave without pay and that he never knew (b) (7)(C) to be absent from work without the proper authorization or without taking the appropriate leave. (b) (7)(C) said that when (b) (7)(C) was reassigned to (b) (7)(C), he heard rumors that her absences increased.

(b) (7)(C) who since May 2012 was (b) (7)(C)'s immediate supervisor, told us that prior to her becoming (b) (7)(C)'s supervisor, she and (b) (7)(C) worked together as (b) (7)(C) on (b) (7)(C). (b) (7)(C) said that she and (b) (7)(C) usually certified each other's timecards and that she knew that (b) (7)(C) was approved to take leave under FMLA. She said that she never suspected (b) (7)(C) of malingering but that she felt some minor frustration with (b) (7)(C)'s frequent absences. She also said that a few of (b) (7)(C)'s subordinates expressed to her their frustrations with (b) (7)(C)'s inaccessibility as a supervisor.

(b) (7)(C) told us that she twice requested and was approved to participate in FMLA for her migraine headaches. She said that she never falsely claimed to be sick when she was not and that she always used sick leave or leave without pay under FMLA when necessary. BVA Management provided FMLA records that confirmed (b) (7)(C)'s participation in FMLA for a serious health condition, once in July 2009, and a second time in September 2011. The records further reflected that on each occasion, (b) (7)(C) provided BVA Management with the appropriate documentation from her healthcare provider certifying that she experienced severe migraine headaches preventing her from being able to work.

(b) (7)(C)'s time and attendance records reflected that she was frequently absent since 2009; her supervisors properly authorized her absences; and, her supervisor or (b) (7)(C), and not (b) (7)(C), certified her timecards in VA's time and attendance system. Leave records reflected that (b) (7)(C) used accumulated sick leave or leave without pay under FMLA for her absences. Payroll records further showed that (b) (7)(C)'s net pay was always correctly reduced whenever she was absent while on approved leave without pay. (b) (7)(C)'s VA email records reflected that she frequently communicated with her immediate supervisor and her (b) (7)(C) regarding her absences. These were primarily communications of (b) (7)(C) "calling in sick," providing them updates on her condition, or informing them of when she expected to return to duty.

Conclusion

We did not substantiate that (b) (7)(C) misused her official time. As such, we also did not substantiate that BVA Management allowed (b) (7)(C) to misuse her official time without taking the appropriate corrective action. Two of (b) (7)(C)'s former (b) (7)(C), both

whom routinely certified (b) (7)(C)'s timecards, told us that they never knew (b) (7)(C) to be absent without authorization. FMLA records showed that (b) (7)(C) properly applied for participation in FMLA and that BVA Management properly approved her participation based on the certifications provided by her healthcare provider. In addition, time and attendance and email records showed that (b) (7)(C) appropriately requested, and BVA Management properly approved and accounted for, her absences. Furthermore, payroll records reflected that (b) (7)(C)'s net pay was always reduced accordingly, whenever she took leave without pay. Based on the foregoing findings, these allegations are closed without a formal report or memorandum.

Prepared By: (b) (7)(C) 6/26/2012
Date

Approved: (b) (7)(C) 6/26/12
Date